54 The Sociology of Human Rights

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One of the most difficult lessons to teach about **human rights** is that people have not always framed their grievances using the language of rights. In the past, Canadians were more likely to reference socialism, industrial democracy, Christian values, or British justice when they felt wronged and sought restitution. At a meeting of the Victoria School Board in 1922, for instance, Trustee Bertha P. Andrews condemned the systemic segregation of Asians in schools as "a violation of the fundamental principles of British justice and even a greater violation of the basic principles of our Christian religion" (Stanley 2011). When people did speak about rights, it was often in reference to speech, association, assembly, press, religion, voting, due process, and equal treatment. Today, rights talk has gone far beyond political and civil freedoms to include everything from the environment to Internet access.

A sociological approach to human rights understands that rights derive from society and the state rather than an abstract principle. There is a distinction between human rights laws, which are codified rules, and talking about human rights as aspirations or competing moral claims. In this way, human rights are a sociological as well as a legal fact. Human rights should be understood as they are practised in social life (Griffin 2008). Our understanding of human rights must go beyond abstract universalism and recognize that each society has its own rights culture that is socially constructed. Claims to universality confuse the way human rights are realized as a distinct social practice.

When lawyers and judges debate human rights, they often appeal to abstract principles. The legal approach posits that human rights derive from an abstract pre- social individual who has rights by virtue

of his or her humanity. In theory, there would be no limit to how we define human rights. In the sociological tradition, however, "any discussion of human rights should be firmly linked to the capacity of the state and society at large to guarantee the enjoyment of those rights" (Madsen and Verschraegen 2013). Human rights are a particular type of social practice. Sociology can help us understand how and why human rights have emerged as a powerful social force; how rights are realized in practice; how society resolves competing rights claims; and what were the social conditions that made rights significant in a particular historical moment. In order to have social meaning, human rights must become embedded in routine practices of societal institutions such as schools, hospitals, families, courts, and government (Madsen and Verschraegen 2013). In other words, a sociological approach helps us understand the societal preconditions for the emergence and practice of human rights.

Sociology's founders scorned the idea of human rights. Émile Durkheim, Karl Marx, and Max Weber believed that rights were nothing more than a philosophical abstraction. They rejected the notion of universal values that were independent of society. Over time, though, sociologists have come to recognize the increasing influence of human rights. They have sought to understand those societal preconditions that facilitated the popularization of human rights.[1] Societal preconditions might include, for example, democracy and capitalism, which facilitated the emergence of human rights. A modern industrial economy combined with a powerful state produces social disruptions arising from mass education, geographic mobility, and segmented family units. Disruptions to social networks, as well as an emphasis on individual autonomy, facilitated the popularization of human rights as a way of framing grievances. The proliferation of rights talk also coincided with the growing repressive capacity of the state, as well as the emergence of expansive state bureaucracies. In this way, rights serve a particular function: to protect autonomy in a liberal society where the individual is paramount.[2]

Rights have, throughout history, been a rallying cry for those committed to equality and inclusivity rather than exclusion and privilege. Conflict is at the very heart of human rights. It is a language that the weak appropriate to challenge the powerful. It is effective because human rights principles such as equal treatment or freedom are embraced by the weak and powerful alike. At the same time, the practice of human rights differs among communities. A **rights culture** is the way a community interprets and applies rights in practice (Clement 2016). Canada's rights culture is most apparent in those rights that are codified in law. But human rights are not simply law. In fact, the law is simply a reflection of existing social practices. To have social meaning, human rights must be part of people's daily lives and integral to societal institutions. A rights culture is constitutive of those rights that are deeply embedded in the practices of social and political life. To say that Canadians have a rights culture is to assert that rights are a product of community, and that they evolve as part of that community over time. Rights are not above politics, nor do they exist in the abstract outside our community. There may indeed be universal principles that should apply to every human being, but each society interprets and applies human rights in its own way. Perhaps the only genuinely universal human right, as **Hannah Arendt** once suggested, was the right to have rights. In other words, the only universal human right is to belong to a community that recognizes and protects rights (Arendt 2004). A stateless person has no human rights.

It is misleading, therefore, to suggest that human rights are based on universal truths or moral absolutes. In fact, human rights have an instrumental or political function (Goodhart 2013). The state might enforce rights through law, but new rights claims emerge from people and movements outside the state who frame their grievances and their vision for social change using the language of rights. Human rights have a social life in that they emerge from shared understandings of what rights should be. As a result, every society has its own rights culture. Human rights have universal

appeal as abstract principles, but they are not premised on a shared universal understanding. Rather, institutions, social practice, historical context, and resistance shape rights cultures. One of the most salient examples of how history has shaped Canadians' rights culture is the commitment to the principle of self-determination for Aboriginal peoples and French Canadians (Clement 2016). State policy relating to Aboriginal peoples may be flawed, but there is growing consensus around their collective rights. Moreover, the federal government has acknowledged the collective rights of French Canadians to protect their language and culture. It has even gone so far as to legislate a formula to break the country apart.

There are other notable aspects of Canadians' rights culture (Clement 2016). Capital punishment is illegal. Women have the right to an abortion. There is a history of tolerance toward religious minorities. Sexual minorities enjoy more freedom in Canada than many other countries. The constitution guarantees freedoms of speech, assembly, association, press, and religion as well as due process and equal treatment (with notable limits). The **Charter of Rights and Freedoms** is unique in the world in that it recognizes multiculturalism, minority language education, the equality of men and women, and Aboriginal peoples' rights as human rights.

The most important lesson that history teaches about Canada's rights culture is that it is liberal and individualistic. This focus on individual rights often acts as a type of filter in public debates around the legitimacy of new rights claims. Canadians have traditionally given greater prominence to civil and political rights above economic, social, or cultural rights.

For example, people have a right to request legal aid, but receiving legal aid is not guaranteed. Canadians have a right to access health care or education, but many people cannot afford to attend university or pay for expensive medicines. Citizens have the right to vote and to participate in the social, economic, and cultural life of the nation without discrimination. But there is no human right to material equality. Poverty, in other words, is not recognized in law as a human rights violation. Another feature of Canada's rights culture is that, during periods of emergency, the state has often temporarily suspended rights.

Perhaps the most notable feature of Canada's rights culture is the failure to fully embrace economic and social rights. This does not necessarily reflect a failure of rights discourse. Human rights has, throughout history, become so closely aligned with individual autonomy and law that it is hard to imagine rights as a transformative discourse (Stammers 2009). And yet rights discourse has become the dominant vernacular for framing grievances precisely because it is malleable. If framing grievances as human rights violations has failed to produce material equality, the fault lies with our society's lack of commitment to genuine equality as opposed to rights discourse. In this way, liberalism and capitalism have profoundly shaped Canada's rights culture. It is a rights culture largely premised on treating everyone the same and providing equal opportunity, which has allowed systemic inequalities in wealth to flourish. Nonetheless, new rights claims emerge every year. It is not uncommon to hear Canadians today speak of the environment, housing, assisted suicide, natural resources, or communication as human rights. As society changes, so too will Canada's rights culture.

Notes

1. Bryan S. Turner's (1993) pioneering essay on sociology and human rights helps explain why sociologists have been hesitant to engage with the study of human rights in the past. More recent studies on the sociology of human rights include: Armaline, Glasberg, and Pyrkayastha (2015); Hynes, Lamb, Short, and Waites (2010, 2011); Sjoberg, Gill, and Williams (2001); and Sznaider (2006).

2. For a more detailed discussion on the sociological tradition, as well as societal preconditions that facilitated the popularization of rights discourse, see Madsen and Verschraegen (2013).

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